

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

FRIENDS OF MĀHĀ‘ULEPŪ, et. al,) Civil No. 5CCV-24-0000021
)
) Plaintiffs,)
) DECLARATION OF ELIZABETH
) OKINAKA
)
) vs.)
)
5425 PAU A LAKA, LLC, et. al,)
)
) Defendants.)

DECLARATION OF ELIZABETH OKINAKA

I, ELIZABETH OKINAKA, do declare under penalty of law that the following is true and correct.

1. I make this declaration upon personal knowledge.
2. I am a resident of Kōloa on the island of Kaua‘i.
3. I am the founder and an officer of Plaintiff SAVE KŌLOA, a nonprofit corporation, whose purpose includes raising awareness and trying to ensure that our Kōloa community is not developed in violation of applicable laws and regulations.
4. Save Kōloa and Plaintiff FRIENDS OF MĀHĀ‘ULEPŪ (collectively “Plaintiffs”) filed a lawsuit for declaratory and injunctive relief against Defendants 5425 PAU A LAKA, LLC, a Hawai‘i limited liability company, MP ELKO II, LLC, a Nevada limited liability company, MP FINANCIAL GROUP LTD. dba Meridian Pacific, a Nevada profit corporation, MP ELK GROVE LLC, a California limited liability company, a Nevada limited liability company, KAUAI HALE, INC., a Delaware profit corporation (collectively “Developers”), DEPARTMENT OF PUBLIC WORKS, COUNTY OF KAUA‘I (“County”), and DOES 1-27 (collectively, “Defendants”) concerning their failure to follow procedures for obtaining a grading and grubbing permit for development of a luxury vacation condominium project named Kauanoē o Kōloa situated on approximately 27.8 acres in Kōloa, Kaua‘i, Hawai‘i, designated by Tax Map Key Nos. (4) 2-8-014-032:0001- 0019 (the “property” or “project”).
5. I was raised in Kōloa and Omao. I currently live in Kōloa.
6. I am familiar with the property and its environs, having visited the area many times

and in recent years.

7. Attached as **Exhibit “02”** is a true and correct copy of the file named: “Kauanoe O Koloa Mass Grading Plan 10-14-21” obtained from the Kaua‘i County Department of Public Works via a public records request pursuant to Hawai‘i Revised Statutes (HRS) Chapter 92F, obtained on or about September 9, 2022

8. The property is adjacent to the historic, public Hapa trail, which was once the major route connecting Po‘ipū and Kōloa. I have observed Hapa trail, which is at a lower elevation to the property and would receive stormwater runoff from the property.

9. The subsurface of the property is characterized by many voids, which can and likely do serve as habitat for the endangered Kaua‘i cave spider and Kaua‘i cave amphipod. The property adjoins the singular Kōloa cave system, which is the only area in the world that these species are known to be found.

10. I am familiar with the Kōloa cave system. I work as a cave docent at the Makauwahi cave reserve, which is southeast of the property. I have learned much about the history and extent of the Kōloa cave system through my training and experience as a cave docent.

11. Attached as **Exhibit “03”** is a true and correct copy of Figure 3.5 “Designated Critical Habita [sic] Units in the Project Vicinity” and other excerpts from the Kaua‘i Planning Department Kōloa-Po‘ipū Regional Wastewater Reclamation Facility Project Final Environmental Impact Statement, noticed Dec. 8, 2009, downloaded from the State website at: https://files.hawaii.gov/dbedt/erp/EA_EIS_Library/2009-12-08-KA-FEIS-Acceptance-Koloa-Poipu-Wastewater.pdf.

12. The property is also part of the Kiahuna complex of archaeological sites. The property is part of the historic Kōloa field system, a traditional Hawaiian agricultural irrigation complex, with parallel and branching ‘auwai, lo‘i terraces, aqueducts, habitations, and burials, which often occurred in caves.

13. Attached as **Exhibit “14”** is a true and correct copy of Figure 16 “Archaeological Sites” and other excerpts from the Final Environmental Impact Statement for the Village of Po‘ipū, published November 13, 2006, downloaded from the State website at: files.hawaii.gov/dbedt/erp/EA_EIS_Library/2006-11-23-KA-FEIS-Village-Poipu.pdf.

14. Save Kōloa founders and members are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property and are

lineal descendants of iwi kupuna located on the property.

15. Save Kōloa members include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species.

16. Save Kōloa members' Kānaka Maoli traditional and customary rights are also exercised through visiting, memorializing, and caring for historic properties, including three burial mounds that exist, or previously existed, on the property, as well as a heiau that was not documented in archaeological documents prepared by the Developers' consultants.

17. On December 14, 2020, I observed a large machine clearing property and drive over an ancient rock wall. At that time, I talked to the heavy machine operator who admitted there were no permits for the work. The heavy machine operator provided me with contact information for the property owner. I called the phone number and spoke to a Rick Cassidy who answered.

18. On February 22, 2021, I talked to Rick Cassidy on the property. I then called Planning Department Deputy Director Jodi Higuchi-Sayegusa to complain about illegal grubbing and grading taking place on the property.

19. Also on February 22, 2021, I saw Nancine "Missy" Kamai working on the property. I waited until she had completed her surveying work. We talked for at least 45 minutes, during which she affirmed that the earthen and rock mounds we observed on the property were burial mounds. She told me the grass was very tall and overgrown such that it impeded her archaeological surveying work. She said she wanted a full field inventory survey done again, but that the property would need to be cleared by hand.

20. I regularly observed the property after February 2021. No such clearing was conducted before March 20, 2021, which is referenced as a survey date in Developers' "Final Archaeological Literature Review and Field Inspection of the Proposed Kauanoē o Kōloa Project", prepared by W. Folk, Missy Kamai, and H. Hammatt, dated December 2021, which Plaintiffs obtained from Developers in Civil No. 5CCV-22-0000036, as their exhibit named "DMP-12." A true and correct copy of excerpts of this document is attached as **Exhibit "15"**

21. On April 19, 2021, I observed trucks and heavy machinery on the parcel operated by personnel from "Earthworks Pacific Inc." and their consultant Geolabs. I observed a bulldozer, a bulldozed path created for drilling equipment, and drilling occurring on the parcel.

While Geolabs was drilling and doing percolation drainage tests, I saw the drills hit water. Attached as **Exhibit "16"** is a true and correct copy of photographs I took of the Geolabs vehicles and Developers personnel, including Colin Thompson, at the property on April 19-21, 2021.

22. On April 24-25, 2021, I observed a bulldozer that was clearing the property and I saw a heiau pohaku (rock used as part of a ceremonial historic site) and auwai wall were crushed in the process.

23. On May 9, 2021, I sent a complaint letter to the Planning Department about illegal ground disturbance on the property.

24. On April 6, 2022, I saw large machinery appear on the property and were grubbing and grading large areas of the southeast and north portions of the parcel. I contacted the County Planning Department at that time.

25. On May 26, 2022, workers on the property were blasting the ground, through use of what appeared to be explosives.

26. On February 17, 2024, I used my drone to videorecord the property, through which recordings I observed two "Mana Electric" trucks, several heavy machines, and cement poured onto the ground.

27. On February 17, 2024, I again took drone footage of the property, through which I observed heavy machinery on disturbed, graded, and grubbed ground.

28. On February 22, 2024, I again took drone footage of the property, through which I observed heavy machinery on disturbed, graded, and grubbed ground, but also uncleared areas.

29. On March 1, 2024, I saw some of the same heavy machinery that were on the property driving back down to the property from the old Kōloa sugar mill.

30. Attached as **Exhibit "04"** are true and correct copies of photographs taken from my drone footage of the property on February 17, 18, and 22 and March 1, 2024, as noted.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kaua'i

March __, 2024



ELIZABETH OKINAKA
Declarant